

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court NCWD on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. 5:08cv28	DATE FILED 3/20/2008	U.S. DISTRICT COURT NCWD
PLAINTIFF Lowe's Companies, Inc. Et al		DEFENDANT Wall Repair Systems, Inc. Et al
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 7,303,802		**See Attached Complaint**
2 6,607,621		
3 7,316,835		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Frank G. Johns by Kyndra Griffin	(BY) DEPUTY CLERK	DATE 3/20/2008
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

LOWE'S COMPANIES, INC.,
LOWE'S HOME CENTERS, INC., and
LOWE'S HIW, INC.,

Plaintiffs,

v.

WALL REPAIR SYSTEMS, INC.,
JERRY BROWER, and
HOMAX PRODUCTS, INC.,

Defendants.

CIVIL ACTION NO.

JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff LOWE'S COMPANIES, INC. (hereinafter referred to as "LCI"), LOWE'S HOME CENTERS, INC. (hereinafter referred to as "LHC"), and LOWE'S HIW, INC. (hereinafter referred to as "HIW"; LCI, LHC, HIW are referenced together herein as "Plaintiffs") for their Complaint against Defendants WALL REPAIR SYSTEMS, INC., JERRY BROWER, and HOMAX PRODUCTS, INC., allege as follows:

1. This is an action for a Declaratory Judgment and other relief brought under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.
2. Plaintiff LCI is a corporation organized and existing under the laws of the State of North Carolina, having a principal place of business at 1000 Lowe's Boulevard, Mooresville, North Carolina 28117, and doing business in this State and District.
3. Plaintiff LHC is a corporation organized and existing under the laws of the State of North Carolina, having a principal place of business at 1605 Curtis Bridge Road, North

Wilkesboro, North Carolina 28697, and doing business in this State and District. LHC is a wholly owned subsidiary of LCI.

4. Plaintiff HIW is a corporation organized and existing under the laws of the State of Washington, having a principal place of business at 101 Andover Park East, Suite 200, Tukwila, Washington 98188. HIW is a wholly owned subsidiary of LCI.

5. Upon information and belief, Defendant Wall Repair Systems, Inc. (herein referred to as "Wall Repair Systems") is a corporation organized and existing under the laws of the State of Washington, having a principal place of business at 7811 NE St. Johns Rd., Suite D, Vancouver, Washington 98665.

6. Upon information and belief, Mr. Jerry Brower (herein referred to as "Brower") is the President of Wall Repair Systems and an alleged inventor of U.S. Patent No. 7,303,802. Upon information and belief, Defendant Brower is also the listed assignee of U.S. Patent Nos. 6,607,621 ("the '621 Patent"), 7,303,802 ("the '802 Patent"), and 7,316,835 ("the '835 Patent"). Upon information and belief, Mr. Brower resides at 6401 N.W. Lincoln Ave., Vancouver, Washington 98663.

7. Upon information and belief, Defendant Homax Products, Inc. (herein referred to as "Homax") is a corporation organized and existing under the laws of the State of Washington, having a principal place of business at 200 Westerly Road, Bellingham, Washington 98226.

8. Defendant Brower, on behalf of Defendant Wall Repair Systems, has alleged that Plaintiff LCI has violated federal patent laws, and Defendants Brower and Wall Repair Systems have threatened to enforce their alleged rights against Plaintiff LCI. The products accused by Defendants Brower and Wall Repair Systems of such violations are sold at the home improvement retail stores owned and operated by Plaintiffs LHC and HIW.

9. Upon information and belief, Defendant Homax caused to be supplied, and did supply, the products that are at issue in this matter.

10. This Court has jurisdiction over the subject matter of this action on the following grounds:

- (a) 28 U.S.C. § 1331, this being a civil action arising under the laws of the United States;
- (b) 28 U.S.C. § 1337(a), this being a civil action arising under an Act of Congress regulating commerce and protecting trade and commerce;
- (c) 28 U.S.C. § 1338(a), this being a civil action arising under an Act of Congress relating to alleged patent rights; and
- (d) 28 U.S.C. § 1367(a), this being a civil action including claims that are so related to claims that are within the original jurisdiction of this Court that they form part of the same case or controversy under Article III of the United States Constitution.

11. This Court may declare the rights and other legal relations of the parties in this case under 28 U.S.C. § 2201, and Rule 57, Fed.R.Civ.P., because an actual and justiciable controversy exists concerning the rights of, and legal relations between, Plaintiffs and Defendants.

12. This Court has personal jurisdiction over Defendants Brower and Wall Repair Systems consistent with the principles underlying the U.S. Constitution and N.C. Gen Stat. § 1-75.4. Defendant Brower, on behalf of Defendant Wall Repair Systems, sent a letter to this State and District accusing Plaintiff LCI of selling allegedly infringing products, and later sent follow-up correspondence to Plaintiffs' counsel threatening enforcement of Defendants Brower's and Wall Repair Systems' alleged rights. Additionally, upon information and belief,

Defendants Brower and Wall Repair Systems are doing business and have done business in this State and District.

13. This Court has personal jurisdiction over Defendant Homax consistent with the principles underlying the U.S. Constitution and N.C. Gen. Stat. § 1-75.4. Additionally, Defendant Homax, on information and belief, is doing business in this State and District, and has entered into an agreement wherein it agreed to submit to the jurisdiction of the Courts of this State.

14. Venue is proper in this Court under the provisions of 28 U.S.C. § 1391 because, among other things, a substantial part of the events giving rise to Plaintiffs' claims occurred in this District, and on information and belief, Defendants are subject to personal jurisdiction in this District.

15. On or about February 14, 2008, Defendant Brower, President of Defendant Wall Repair Systems, sent a letter to LCI's corporate offices in Mooresville, North Carolina alleging ownership of the '621 Patent, the '802 Patent and the '835 Patent, all related to wall patches, and accused Plaintiff LCI of selling products which infringed upon those alleged rights. Defendants Brower and Wall Repair Systems are aware that Plaintiff LCI does not sell the products in question.

16. Defendant Brower sent follow-up correspondence to Plaintiffs' counsel on or about February 29, 2008 indicating that Defendants Brower and Wall Repair Systems would include Plaintiffs in legal proceedings if they did not replace their allegedly infringing products with Defendant Wall Repair Systems' products.

17. In a letter dated March 17, 2008, Homax informed Defendants Brower and Wall Repair Systems that their claims are believed to be baseless. In response, in correspondence

dated March 19, 2008, Defendants Brower and Wall Repair Systems again erroneously threaten litigation against Plaintiff LCI for alleged patent infringement relating to the products supplied by Defendant Homax and sold by Plaintiffs LHC and HIW.

18. Upon information and belief, Plaintiffs have not violated any purported rights of Defendants Brower or Wall Repair Systems. In the alternative, and without acknowledging any such violations exist, which is specifically denied, Defendant Homax has agreed, and is otherwise obligated, to hold Plaintiffs harmless from and against any and all liability, losses and/or damages which may be assessed against Plaintiffs, including court costs, expenses and attorney's fees.

19. There is an actual and substantial controversy between Plaintiffs and Defendants of sufficient immediacy and reality to warrant the rendering of a declaratory judgment by this Court. Defendants Brower and Wall Repair Systems have made a threat to Plaintiffs' business by accusing Plaintiffs of unlawful actions and requesting that Plaintiffs immediately cease from certain business activities.

20. Plaintiffs are entitled to a judgment declaring their rights as requested herein. Moreover, and in the alternative, Plaintiffs are entitled to a judgment against Defendant Homax for indemnification, as requested herein.

CLAIM FOR RELIEF

**DECLARATORY JUDGMENT REGARDING ALLEGATIONS
BY DEFENDANTS BROWER AND WALL REPAIR SYSTEMS
AND ALTERNATIVELY
FOR INDEMNIFICATION FROM DEFENDANT HOMAX**

21. Plaintiffs incorporate by reference paragraphs 1-20 as if set forth fully herein.
22. There is an actual and justiciable controversy between Plaintiffs and Defendants Brower and Wall Repair Systems concerning their allegations that Plaintiffs have violated Defendants Brower's and Wall Repair Systems' purported rights.
23. These allegations place a cloud over Plaintiffs' businesses, and in particular Plaintiffs' rights and abilities to continue their business activities relating to the products accused of violating Defendants Brower's and Wall Repair Systems' alleged rights, and will cause uncertainty among customers, prospective customers and suppliers and elsewhere in the marketplace, likely leading Plaintiffs to lose revenues and/or business opportunities.
24. Plaintiffs are entitled to a judgment declaring that Plaintiffs' continued importing, distributing, sales, offers for sale, and use of the products accused by Defendants Brower and Wall Repair Systems of patent infringement has been lawful, and declaring that Plaintiffs have not otherwise violated any purported rights of Defendants Brower and Wall Repair Systems.
25. In the event Plaintiffs, or any of them, are found liable for violating Defendants Brower's and/or Wall Repair Systems' alleged rights, pursuant to an agreement entered by Defendant Homax, Defendant Homax is obligated to indemnify and hold Plaintiffs harmless from and against any and all liability, losses and/or damage, arising out of the claims made against Plaintiffs by Defendants Brower and Wall Repair Systems. Defendant Homax's obligation in this regard shall include payment and/or reimbursement of court costs, expenses

and attorney's fees, and specifically applies to any alleged claims of infringement of intellectual property rights, and other violations of law. As set forth in the agreement entered by Defendant Homax, Plaintiffs are entitled to indemnification from Defendant Homax for all expenditures, including any damages, costs, expenses and attorneys' fees, which are incurred by Plaintiffs as a result of their defense of these allegations made against them by Defendants Brower and Wall Repair Systems.

WHEREFORE, Plaintiffs Lowe's Companies, Inc., Lowe's Home Centers, Inc. and Lowe's HIW, Inc. pray for the entry of a judgment:

- A. Declaring that Plaintiffs have not infringed or otherwise violated any purported rights of Defendants Brower and Wall Repair Systems, including any provisions of 35 U.S.C. § 1 *et seq.* or any other asserted federal, state, or common law laws;
- B. In the alternative, declaring that Plaintiffs are entitled to indemnification, and awarding Plaintiffs indemnification, from Defendant Homax of any and all damages, costs, expenses, and attorneys' fees incurred by Plaintiffs as a result of any claim alleged against Plaintiffs by Defendants Brower and Wall Repair Systems;
- C. Awarding Plaintiffs indemnification from Defendant Homax of all damages, costs, expenses and attorneys' fees incurred by Plaintiffs as a result of their defense against the allegations made by Defendants Brower and Wall Repair Systems; and
- D. Granting Plaintiffs their costs and awarding Plaintiffs their reasonable attorneys' fees and other litigation expenses, together with such further legal and equitable relief as the Court may deem just and proper.

Plaintiff demands a trial by jury on all issues so triable.

This 20th day of March, 2008.

Respectfully submitted,

s/ Gregory J. Murphy

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